

# Prince Declaration

## Exhibit 3

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP :  
INC., HARPERCOLLINS :  
PUBLISHERS LLC, JOHN :  
WILEY & SONS INC., :  
and PENGUIN RANDOM :  
HOUSE LLC, :

Plaintiffs, : Case No. 1:20-cv-04160

v. :

INTERNET ARCHIVE and :  
DOES 1 through 5, :  
inclusive, :

Defendants. :

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Wednesday, June 8, 2022

- - -

Confidential remote videotaped deposition of RASMUS  
JØRGENSEN, Ph.D., beginning at 10:08 a.m., before  
Christina S. Hotsko, RPR, CRR, when were present on  
behalf of the respective parties:

1 or your reply report?

2 A. No.

3 Q. Have you ever had any conversations with  
4 Dr. Reimers regarding the Internet Archive?

5 A. I have never spoken with her.

6 Q. Okay. Let's talk a little bit about your  
7 background.

8 Could you tell me your title?

9 A. I'm a senior consultant at NERA Economic  
10 Consulting in Washington, D.C.

11 Q. And you have a Ph.D. in economics, yes?

12 A. Yes.

13 Q. Have you ever been a professor at an  
14 American university?

15 A. I have not been a professor at an  
16 American university.

17 Q. And you are currently employed by NERA,  
18 which is an economic consulting firm, correct?

19 A. Correct.

20 Q. And I see you are in the Washington, D.C.  
21 office now.

22 Is that where you have been over the last

1 (Jørgensen Deposition Exhibits 1 and 2  
2 marked for identification and attached to  
3 the transcript.)

4 BY MS. STEINMAN:

5 Q. So let's start with Exhibit 1,  
6 Dr. Jørgensen.

7 Is that your initial expert report in  
8 this case?

9 A. Let me just take a look.

10 That appears to be the case.

11 Q. And if you would please look at Exhibit  
12 Number 2 and confirm for the record that that is  
13 your reply report in this case.

14 A. I will.

15 That appears to be the case.

16 Q. Let's turn, please, to Exhibit 18 in your  
17 second report, which is your resume.

18 A. Give me a moment.

19 I'm there.

20 Q. Okay. So in the top paragraph in your  
21 resume, it says, "His areas of focus are  
22 conducting damages analysis in the context of

1 patent infringement, misappropriation of trade  
2 secrets, breaches of contract, and anticompetitive  
3 behavior."

4 In this case, in your expert report, you  
5 were not conducting a damages analysis, correct?

6 A. That's correct.

7 Q. And this case obviously isn't a case of  
8 patent infringement, trade secrets, breach of  
9 contract, or anticompetitive behavior, correct?

10 A. That's my understanding. Yes.

11 Q. So this expert report is not in the main  
12 area of focus for you; is that correct?

13 A. As it's stated here, that would be one  
14 way to characterize it.

15 Q. And this may sound like a silly question,  
16 but what does a damages analysis assess?

17 A. I can give you an example of past work  
18 I've done here at NERA. I've supported experts  
19 that acted as damages experts in, for instance, a  
20 patent infringement lawsuit where, in the specific  
21 case I'm thinking of, we were engaged to assist  
22 the Court on behalf of the plaintiff who had

1 MR. GRATZ: Objection. Vague.

2 THE WITNESS: I'm not sure what you mean  
3 by "widespread." As I said, I considered, among  
4 other things, Internet Archive's accused digital  
5 lending during a time where there was instant  
6 access; there were no constraints on the number of  
7 loans of the works-in-suit.

8 So to the extent that period is  
9 informative about other -- you used the  
10 word "widespread" activities -- I think the  
11 analysis and the opinions I'm offering in this  
12 matter could be relevant for that.

13 BY MS. STEINMAN:

14 Q. Okay. Have you ever studied the book  
15 publishing industry prior to this case?

16 A. Not specifically. I'm a trained  
17 economist and our -- you know, as an economist, we  
18 are trained in economic principles that we'd like  
19 to believe applies broadly.

20 So not specifically, but in general terms  
21 yes.

22 Q. But you have no particular expertise in

1 the book publishing industry as opposed to other  
2 industries?

3 A. I don't.

4 Q. Okay. And have you -- I take it you've  
5 never published any articles about the book  
6 publishing industry.

7 A. I have not.

8 Q. Have you ever worked in book publishing?

9 A. I have not.

10 Q. Have you ever taken any courses regarding  
11 the book publishing business?

12 A. I have not.

13 Q. Have you conducted any interviews of book  
14 publishing employees in connection with writing  
15 your report?

16 A. I have not.

17 Q. Have you ever worked as a business  
18 executive?

19 A. I have not.

20 Q. Have you ever worked in any other media  
21 business besides book publishing?

22 A. Can you repeat your question?

1           Q.   Sure.  Have you ever worked in any other  
2   media business:  Music, TV, film?

3           A.   I have not.

4           Q.   Do you consider yourself knowledgeable  
5   about tradebook publishing in the United States?

6           A.   I have reviewed the materials -- some of  
7   the materials that are available in this matter to  
8   educate myself about the facts relevant to the  
9   assignments I was asked to look at.

10           And so I have some understanding based on  
11   the industry, but I don't necessarily consider  
12   myself to be an industry expert.

13           Q.   Okay.  Let's look at -- you have  
14   published a couple of articles that are on your  
15   CV, which is, again, Exhibit 18 in your Exhibit  
16   Number 2.

17           A.   Give me a moment.

18           Q.   Take your time.

19           MR. GRATZ:  Sorry, are we in Exhibit 2 or  
20   Exhibit 1?

21           MS. STEINMAN:  We are in Exhibit 2  
22   because I believe that Dr. Jørgensen provided an

1 updated CV in his reply report, so I figured we  
2 would look at the latest version of it.

3 MR. GRATZ: Great. Thank you.

4 BY MS. STEINMAN:

5 Q. So it's Exhibit 18 to the reply report,  
6 which is Exhibit 2 of this deposition.

7 A. Just one moment. Yes, I'm there.

8 Q. Fabulous. Okay.

9 There are four publications here,  
10 correct?

11 A. Correct.

12 Q. Were you the lead author on any of these  
13 four publications?

14 A. In my experience, economics -- or at  
15 least the collaborations I've been part of haven't  
16 used those labels. They are not as commonly used  
17 in economics as they are in other fields, so I  
18 would say it was a shared collaboration and we all  
19 contributed equally.

20 Q. Okay. None of these four articles are  
21 about the book publishing market, are they?

22 A. No, they are not.

1 Q. And none of them are about the -- more  
2 generally about media industries, correct?

3 A. I think that's fair.

4 Q. Okay. And none of these articles are  
5 about copyright infringement, are they?

6 A. They are not.

7 Q. And none of these articles are about  
8 market harm under the Copyright Act, correct?

9 A. That's correct.

10 Q. Okay. And were any of these articles  
11 published in peer-reviewed academic journals?

12 A. Some of them were.

13 Q. So let's take a look at them. The first  
14 one is a NERA white paper.

15 Was that a peer-reviewed academic  
16 journal?

17 A. That is not a peer-reviewed academic  
18 journal. No.

19 Q. Okay. The second one is the -- was an  
20 article on wage effects in the American Economic  
21 Review.

22 Is that a peer-reviewed academic journal?

1           A.    It is.

2           Q.    Okay.  And the third was "Understanding  
3   Cross-country Differences in Export Premia" in  
4   World of -- in Review of World Economics.

5                Is that a peer-reviewed economic journal?

6           A.    I believe it is.

7           Q.    And then we have the last one, "Defining  
8   and Measuring Entrepreneurship" in Foundations and  
9   Trends in Entrepreneurship.

10               Is that an academic peer-reviewed  
11   journal?

12           A.    It is.

13           Q.    Okay.  And can you just give me a very  
14   short one- to two-sentence summary of the four  
15   articles and what they addressed?

16           A.    That's a tough challenge.  It's been a  
17   while since I reviewed these articles in great  
18   detail, so my memory may be a little fuzzy on some  
19   of the exact details, but I'll try my best.

20                If we start from the bottom, "Defining  
21   and Measuring Entrepreneurship," that was a survey  
22   article summarizing various theories of how the,

1 quote, entrepreneur, unquote, enters into sort of  
2 economic thinking and economic theories and  
3 economic models. And that article also included  
4 measurements of entrepreneurship across countries.

5 The next one on export premia, it was a  
6 survey article of cross-country micro-level  
7 evidence on the role of exporters and the ways --

8 Q. Exporters of what type of products?

9 A. Of all products, but generally speaking,  
10 the data that's available is exports of physical  
11 goods. So, generally speaking, countries collect  
12 data on export activities through customs, and we  
13 know those customs records will most often include  
14 transaction involving a physical good moving from  
15 one country to the next.

16 The other article, the Wage Effects of  
17 Offshoring, it looks at what are the wage impacts  
18 of increased offshoring; that is, when firms move  
19 production activities abroad, presumably for  
20 cost-saving motives, how does that impact their  
21 labor demand domestically? How does it affect  
22 workers?

1           And the first one -- "Does Temporary  
2   Generic Competition Have a Lasting Impact on  
3   Branded Drug Sales?" -- my co-author and I looked  
4   at sales data of branded drugs that face  
5   competition from so-called at-risk generic launch,  
6   that entered the market and was subsequently  
7   pulled off the market. So that temporary  
8   competition, how did that impact the branded drug?

9           So that's my summary. As I said, I'm a  
10   little fuzzy on some of the details, so I -- I did  
11   my best.

12          Q. That was perfect. I was really just  
13   looking for a high-level description. That was  
14   just what I needed.

15          You mentioned that the Defining and  
16   Measuring Entrepreneurship and the Understanding  
17   Cross-country Differences in Export Premia  
18   articles were survey articles.

19          Is my understanding that survey articles  
20   look at the literature in a field and, in essence,  
21   summarize it, as opposed to doing original  
22   empirical research?

1           A. I would not characterize it in that way.  
2       That's not what was done here.

3           Q. Thank you.

4                    Could you explain to me what you meant,  
5       then, by survey?

6           A. So Defining and Measuring  
7       Entrepreneurship, in that article we surveyed sort  
8       of economic theories on the topic, and then we did  
9       a separate empirical analysis that was original  
10      and independent of what was out there.

11                   So it had a combination of both things.

12          Q. It was a hybrid model.

13          A. It was a hybrid model.

14          Q. Fabulous.

15                   And how about the one on export premia?

16          A. It was a survey in the sense that it was  
17       a collaboration between researchers in a number of  
18       different countries, and each country team  
19       basically provided analysis of data for that  
20       country.

21                   And again, this was analysis of  
22       micro-level data that's generally confidential

1 to isolate the impact of the National Emergency  
2 Library.

3 Q. I'm asking, I think, a simpler question,  
4 which is, the Internet Archive could have led,  
5 say, hypothetically, to a loss of ten checkouts on  
6 OverDrive, and yet, if there were much larger  
7 market forces going on, it would be difficult to  
8 see the impact of the Internet Archive because  
9 those other market factors might have had a much  
10 larger impact on the OverDrive checkouts. Is that  
11 a fair proposition?

12 A. In your hypothetical where we're looking  
13 at ten checkouts, I guess that's a possibility.

14 Q. Let's look at paragraph 15 of your  
15 initial report.

16 A. Yes.

17 Q. You say, "Books are what economists refer  
18 to as differentiated products," correct?

19 A. Correct.

20 Q. And you say that "each book title can be  
21 represented by a unique set of product attributes  
22 that are specific to a given title," correct?

1           A.   That's what it says.

2           Q.   And each title is unique, yes?

3           A.   I think if you represent each title in  
4   that attribute space, yes, they would likely be  
5   unique. And that is also my understanding of how  
6   the publishers -- or the plaintiff publishers  
7   represent books.

8           Q.   Yes. That's true.

9                   And each title's sales are going to be  
10   impacted differently by various factors impacting  
11   a book market; isn't that true, too?

12          A.   Yes. Each book will be affected by a  
13   myriad of conditions in the marketplace, and some  
14   of them will be common for different titles and  
15   some of them will be unique to each title.

16          Q.   And even with broad macroeconomic  
17   impacts, such as COVID, different titles are going  
18   to be impacted differently, correct? For example,  
19   cookbooks might see an upswing that's not the case  
20   for autobiographies.

21               MR. GRATZ: Lacks foundation.

22               THE WITNESS: That's an assertion. That

1 sounds plausible, but I don't -- I haven't seen  
2 the data or the evidence to necessarily suggest  
3 the relationship you're describing.

4 BY MS. STEINMAN:

5 Q. Okay. But more broadly speaking, with  
6 broad macroeconomic factors like COVID, different  
7 titles are going to be impacted differently.

8 Would you agree with that?

9 MR. GRATZ: Lacks foundation.

10 THE WITNESS: Sure. I believe I answered  
11 that before when I said there will be certain  
12 factors that affect different titles. In a  
13 similar way, there will be factors that may be  
14 unique to each title.

15 BY MS. STEINMAN:

16 Q. Okay. Let's look at the data points in  
17 your expert report -- in your two expert reports.

18 It seems to me that the following are  
19 your data points: One, if one compares the Q2 to  
20 Q3 -- I'm sorry, let me start again.

21 If one compares Q2 to Q3 2020, despite  
22 the fact that there was a decrease in Internet

1 Archive loans for the works-in-suit, the OverDrive  
2 loans for the works-in-suit decreased rather than  
3 increased, and they decreased at a higher  
4 percentage rate than overall OverDrive loans.

5 Was that one of your points,  
6 Dr. Jørgensen?

7 A. I believe that's one of the points I made  
8 in my reply report. Yes.

9 Q. Okay. And a second data point was that  
10 the 2019 AAP stats show that e-book sales for the  
11 children's and young adult titles do not show a  
12 summertime sales dip.

13 Does that accurately represent another  
14 one of your data points?

15 A. That was a data point and a direct  
16 response to Dr. Prince, who claims to find  
17 evidence of seasonality and what he refers to as  
18 the summer sales dip. And as I point out in my  
19 reply report, I frankly don't see that dip that  
20 Dr. Prince is referring to.

21 So his evidence on seasonality is, as far  
22 as I can tell, not there.

1 Q. Okay. So those are two of your data  
2 points. A third data point in your two reports is  
3 that if one compares Q2 to Q3 2020, the AAP stats  
4 for e-books show a decline in Q3 2020 of  
5 approximately 3 percent, whereas the OverDrive  
6 loans for the works-in-suit in Q3 fell [REDACTED],  
7 and the e-book sales of the Hachette works-in-suit  
8 in Q3 declined by 29 percent. Is that your third  
9 data point?

10 If you want, I'll be happy to read it  
11 again.

12 A. Yes. Can you please -- and maybe you can  
13 point me for where you are. It sounds like you  
14 are reading from a specific place in my reply  
15 report.

16 Q. No. I'm just reading from my notes.

17 A. Okay.

18 Q. So it seems to me your third data point  
19 is that if one compares Q2 to Q3 2020, the AAP  
20 stats for e-books show a decline in Q3 2020 of  
21 approximately 3 percent, whereas the OverDrive  
22 loans for the works-in-suit in Q3 fell [REDACTED],

1 and the e-book sales -- the Hachette e-book sales  
2 of the works-in-suit in Q3 2020 declined by  
3 29 percent.

4 Is that an accurate summary of your third  
5 data point?

6 A. I believe those numbers are cited in my  
7 report, and I have no reason to believe that what  
8 you said is inaccurate.

9 Q. Do you have any other data points to  
10 support your conclusions?

11 A. I believe in my reply report that another  
12 data point I am referencing in terms of the  
13 overall market evolution is the overall change in  
14 OverDrive checkouts of all titles, so not  
15 restricted to the works-in-suit.

16 So in paragraph 36 of my reply report, I  
17 note that -- and I quote -- according to the  
18 OverDrive data, the total number of e-book loans  
19 decreased by about [REDACTED], from [REDACTED]  
20 to [REDACTED] loans between Q2 and Q3.

21 Q. Okay. And do you have any other data  
22 points, other than the ones we have now just

1 mentioned, that support your conclusions?

2 A. I think you referenced one statistic from  
3 AAP. I believe I cited two in my reply report --

4 Q. Yes.

5 A. -- or maybe --

6 Q. We discussed two.

7 A. Okay.

8 Q. We have discussed the 2019 AAP stats for  
9 the children's and young adult titles that don't  
10 show a summertime dip and the AAP stats for  
11 e-books in Q3 2020.

12 Are there any --

13 A. But in that case, I would like to add  
14 that, in my reply report, I also reference AAP  
15 sales statistics for print books, as stated in  
16 paragraph 39 of my reply report.

17 Q. Yes. And in that paragraph, you cite AAP  
18 monthly stat reports for total print sales --

19 A. Yes.

20 Q. -- correct?

21 And what is your understanding of what is  
22 included in total print sales? Does that include

1 reply report.

2 A. Yes.

3 Q. It says there that "According to the AAP  
4 Monthly StatShot reports, total print (net) sales  
5 increased by 13 percent between Q2 and Q3 in  
6 2020," and it cites to footnote 69, which includes  
7 various citations to AAP Monthly StatShot reports.

8 And is there anything in those Monthly  
9 StatShot reports that indicates the total print  
10 sales would exclude hardcover sales?

11 A. As I recall, those reports include sales  
12 statistics for hardcover and paperback editions  
13 separately. And as I recall, the stats -- the  
14 statistics referenced in paragraph 39, as I  
15 recall, are for paperback editions.

16 Q. Okay. And other than those data points,  
17 do you have any other data points in your  
18 report -- in your two reports?

19 A. The data points I have, of course, is the  
20 data I've analyzed and summarized in the exhibits  
21 I include in my -- in my reports.

22 Q. Okay. But my question is, have we

1 covered them? Have we now listed the data points  
2 that you used in your report?

3 A. I believe we listed the data points that  
4 are explicitly cited in my report. And as I sit  
5 here today, I can't recall if I've looked at any  
6 others. I don't believe that to be the case.

7 Q. I'd like to ask you a series of questions  
8 about things that you did not analyze and have you  
9 confirm to me that these were things you did not  
10 analyze.

11 For the library market, you did not  
12 analyze library e-book revenues. You only focused  
13 on OverDrive checkouts, correct?

14 A. For my analysis of potential  
15 substitution, I looked at checkouts. Yes.

16 Q. And for the library market, you did not  
17 analyze print book sales in 2020, correct?

18 MR. GRATZ: Vague.

19 THE WITNESS: I'm not sure what you're  
20 referencing -- are you referencing my analysis of  
21 Hachette data?

22

1 sales at all in your analysis?

2 A. That's correct.

3 Q. Let's focus further on the fact you did  
4 not analyze library e-book revenues after the  
5 National Emergency Library ended and the  
6 works-in-suit were removed from the Internet  
7 Archive.

8 Both you and Dr. Prince state that it is  
9 complicated and difficult to determine the impact  
10 of these events on library e-book revenues; is  
11 that accurate?

12 A. I think that's a fair summary.

13 Q. And one of the reasons that it's  
14 difficult is that many library e-books are  
15 licensed for a two-year period or 26 circulations.  
16 They're not licensed on a, you know, one-time  
17 basis, correct?

18 A. Yes. I believe that's -- those are the  
19 complicating factors.

20 Q. And it's another complicating factor that  
21 libraries can't buy books until they have the  
22 money to do so and may buy books on, say, an

1 lunch break if the witness needs one.

2 THE WITNESS: I would appreciate that,  
3 but I'll answer the next question and then maybe  
4 we can go offline.

5 MS. STEINMAN: You know what? This is a  
6 perfectly fine -- let's go off the record, please.

7 VIDEO TECHNICIAN: We're going off the  
8 record. The time is 12:51 p.m.

9 (A recess was taken.)

10 VIDEO TECHNICIAN: We're back on the  
11 record. The time is 1:22 p.m.

12 BY MS. STEINMAN:

13 Q. So let's look at Exhibit 8, which is  
14 Dr. Reimers' expert report. And if you would  
15 direct your attention to paragraph 34.

16 A. Yes. Let me scroll to 34.

17 Q. Do you agree with Dr. Reimers' statement  
18 that "Any analysis that tries to quantify the  
19 effects of availability at the Internet Archive on  
20 sales of a title is complicated by the possibility  
21 of concomitant changes in demand for the  
22 particular book and for reading in general that

1 are unrelated to the book's availability at the  
2 Internet Archive"?

3 A. I would agree that any empirical analysis  
4 based on observational or non-experimental data  
5 would have to consider the possibility that there  
6 are other factors that may be important.

7 Q. And do you agree that many factors other  
8 than the ending of the National Emergency Library  
9 and the removal of the works-in-suit from the  
10 Internet Archive could have affected the Hachette  
11 paperback and e-book sales in the third quarter of  
12 2020?

13 A. As I stated earlier, by looking at  
14 changes, I account for any other factors that  
15 don't change from Q2 to Q3 in my analysis and the  
16 opinions I'm offering in my reports.

17 Are there other factors affecting book  
18 sales that may change or not change besides the  
19 closing of the National Emergency Library? Sure.  
20 That's certainly a possibility.

21 Q. I'm going to go through a list of control  
22 factors, and I would appreciate if you would give

1 me an answer on whether or not you controlled for  
2 the following factors in comparing the Q2 and Q3  
3 OverDrive checkouts and the Hachette e-book sales.

4 Did you control for seasonality other  
5 than looking at the 2019 AAP stats showing e-book  
6 sales for the children's and young adult titles?

7 A. I believe I referenced a few other  
8 statistics on that issue, for instance, the  
9 overall volume of OverDrive checkouts between Q2  
10 and Q3 for all titles, so not restricted to the  
11 127 titles at issue in this matter.

12 Q. And did you do any other controls related  
13 to seasonality other than those two?

14 A. We talked about a few other statistics  
15 before the break, including the overall e-book  
16 sales statistics that have been produced by AAP in  
17 this matter. So we looked at e-book sales from Q2  
18 to Q3 where there's a reported decline of less  
19 than 3 percent.

20 Q. Did you do any seasonality controls  
21 specifically for the works-in-suit?

22 A. Did you ask me if I did a seasonality

1 analysis?

2 Q. Yes. Did you do any seasonality controls  
3 for the works-in-suit? For example, did you look  
4 at whether these particular works-in-suit, what  
5 their sales were in 2019?

6 A. I'm not sure how that is relevant. When  
7 you do a seasonality analysis, you need to  
8 consider seasons across many years. And it's  
9 evident, based on the data that's been produced in  
10 this matter, that 2020 is unique in a lot of ways  
11 compared to other years.

12 So such an analysis would necessarily  
13 have to assume that seasonality, as you describe  
14 it, would be the same in 2019, 2020, and I think  
15 that would be an appropriate -- an inappropriate  
16 analysis.

17 Q. Did you look to see whether, for the  
18 works-in-suit, they generally had a dip in sales  
19 in the third quarter of 2019?

20 A. I did not look at that for the reason  
21 that market conditions in 2019 were dramatically  
22 different than market conditions in 2020.

1           Q. Did you look at whether the works-in-suit  
2 had a dip in sales in the summer of 2018?

3           A. I did not look specifically at that  
4 question for the same reason as before, and that  
5 is market conditions in 2018 are drastically  
6 different than market conditions in 2020.

7           Q. Did you look at OverDrive checkouts in  
8 2019 or earlier years, again, to see whether it  
9 was customary to have a dip in sales in the third  
10 quarter or checkouts in the third quarter for the  
11 works-in-suit?

12          A. I did not, for the same reasons as  
13 before: That any patterns that may have emerged  
14 before the pandemic, before 2020, it's -- it's not  
15 obvious to me that you can extrapolate those  
16 patterns to 2020 where the market changed  
17 dramatically in part because of the onset of a  
18 global pandemic.

19          Q. Okay. Let's turn to that global  
20 pandemic.

21               Did your study look at the complex  
22 impacts of the COVID-19 pandemic and how they

1 varied title by title in their impact?

2 A. To the extent that that impact on a  
3 title-by-title basis is the same from Q2 to Q3, I  
4 accounted for that by calculating changes in, for  
5 instance, OverDrive checkouts.

6 Q. And didn't COVID -- weren't the  
7 conditions related to COVID different in Q2 and  
8 Q3 2020?

9 A. With respect to the 127 works-in-suit, I  
10 don't have -- I haven't seen any data or evidence  
11 produced in this matter that would inform me on  
12 that.

13 Q. So you did not, when you were looking at  
14 the decline in OverDrive checkouts of the  
15 works-in-suit and when you were looking at the  
16 decline in the 25 or so Hachette titles, you  
17 didn't ask yourself, is this decline related not  
18 to the Internet Archive but instead related to  
19 complicated COVID-related issues, correct?

20 A. As stated in my reply report, it is true  
21 that things change from Q2 and Q3, and the complex  
22 COVID dynamics that you're asking about I would

1     assume affect all titles. And the AAP sales  
2     statistics for overall e-book markets suggests  
3     that there's an overall decline of less than  
4     3 percent.

5           Q. And on what basis did you conclude that  
6     the impact of COVID would be the same for  
7     different types of titles? Did you do any  
8     research or analysis or interviewing to reach that  
9     conclusion?

10          A. I have no reason to believe that there  
11     should be a difference between the overall market  
12     and the 127 titles at issue. I have not seen any  
13     evidence that would allow me to assess if those  
14     127 titles are representative or not  
15     representative of the overall market.

16          Q. And did you do any research, including  
17     after receiving Dr. Prince's report, to confirm  
18     your assumption that COVID impacted all of the 127  
19     works equally, as compared -- let me rephrase  
20     that.

21                 Did you do any research, after receiving  
22     Dr. Prince's report, to understand how COVID could

1 have impacted certain titles differently than the  
2 overall market?

3 A. I believe the answer to that question  
4 would be, in order to make such an analysis, I  
5 would need to have other titles that are  
6 comparable to the works-in-suit. So basically a  
7 more direct benchline than what the overall market  
8 may be. And I have not seen that data, and  
9 therefore, I can't make those inferences.

10 Q. Okay. Did you control for various supply  
11 chain issues in 2020 during the COVID period?

12 A. To the extent that those supply  
13 conditions have not changed between Q2 and Q3 of  
14 2020, I controlled for them.

15 Q. What basis do you have to believe that  
16 the supply chain issues did not change between Q2  
17 and Q3 2020?

18 A. Which market are we talking about?

19 Q. In the book market.

20 MR. GRATZ: Objection. Vague.

21 THE WITNESS: I mean, the book market is  
22 a broad concept. Are we talk about e-books? Are

1 we talking about print books?

2 BY MS. STEINMAN:

3 Q. Let's focus on print books.

4 Did you attempt to look at supply changes  
5 that might have impacted your comparisons of  
6 OverDrive -- of Hachette print book sales between  
7 Q2 and Q3 2020?

8 A. I'm not aware that Hachette has produced  
9 any information that would shed light on that.

10 Q. That's not my question.

11 My question is, did you look at supply  
12 chain changes that might have impacted the Q2 and  
13 Q3 Hachette print book sales in 2020?

14 MR. GRATZ: Objection. Vague.

15 THE WITNESS: I mean, generally speaking,  
16 how companies source their supplies are governed  
17 by a lot of confidentiality. And I -- I would  
18 assume that you would not be able to research in  
19 the public domain what Hachette's supply  
20 distribution looks like, and therefore, I -- I  
21 would not expect to be able to find public  
22 information that could address that question. So

1     that's why I said before I haven't seen that data  
2     as produced in the record.

3     BY MS. STEINMAN:

4             Q.   Did you do any research, public research,  
5     on the supply chain issues impacting the book  
6     publishing industry in 2020?

7             A.   I'm aware that there have been supply  
8     issues in many industries, and I understand that  
9     that has also impacted the book publishing  
10    industry. But how that specifically relates to  
11    the works-in-suit, I have not seen any evidence  
12    on.

13            Q.   Okay. So you did not control for that in  
14    your expert report?

15            A.   To the extent that it did not change  
16    between Q2 and Q3, I did control for it.

17            Q.   But to the extent it did change, you did  
18    not control for it, correct?

19            A.   Correct.

20            Q.   Okay. Did you -- in your expert report,  
21    did you control for the fact that some of the  
22    titles offered by Hachette are commonly assigned

1 as middle and high school reading during the  
2 school year?

3 A. I have not seen data or evidence on this.  
4 And to the extent that there's no change in that  
5 demand from Q2 to Q3, I've controlled for it.

6 Q. Is school in session in the summer,  
7 Dr. Jørgensen?

8 MR. GRATZ: Lacks foundation. Vague.

9 BY MS. STEINMAN:

10 Q. Is middle school and high school in  
11 session during the summer, Dr. Jørgensen?

12 MR. GRATZ: Same objections.

13 THE WITNESS: As a general matter, the  
14 school year ends and there's a summer break.  
15 As -- I have not seen any evidence that would  
16 suggest that kids would not be interested in  
17 reading certain books over the summer. In fact,  
18 the reported sales dip that Dr. Prince claims to  
19 have found, when I look at that evidence, I don't  
20 see it.

21 BY MS. STEINMAN:

22 Q. Did you control for the Black Lives

1 Matter movement and the fact that, in Q3 2020, the  
2 nation very significantly turned its attention to  
3 racial justice issues?

4 A. To the extent that did not change between  
5 Q2 and Q3, I controlled for it.

6 Q. What makes you believe, Dr. Jørgensen,  
7 that the Black Lives Matter movement did not  
8 change between Q2 and Q3 2020? George Floyd was  
9 killed at the end of May.

10 A. I understand that certain events took  
11 place in 2020 that made certain books -- that  
12 demand for certain books went up.

13 I understand that the 127 titles in this  
14 suit is not on racial issues alone. I understand  
15 that there are certain titles on that issue. So  
16 it may have impacted those titles. But there are  
17 also many titles among the 127 works-in-suit that  
18 I would imagine is not affected by racial justice  
19 interests.

20 Q. If the nation started spending their  
21 reading time on racial justice books and did not  
22 read the types of books that are in the 127

1 works-in-suit, or at least most of the 127  
2 works-in-suit, that could well account for changes  
3 between Q2 and Q3, could it not?

4 MR. GRATZ: Lacks foundation. Calls for  
5 speculation.

6 THE WITNESS: I don't have the data to  
7 answer that question.

8 BY MS. STEINMAN:

9 Q. Assuming that the public spent their  
10 reading hours in Q3 2020 reading books about  
11 racial justice, wouldn't that be one potential  
12 plausible reason for the decline overall of the  
13 OverDrive checkouts and the Hachette sales in  
14 e-book and paperback of the works-in-suit?

15 MR. GRATZ: Lacks foundation. Calls for  
16 speculation.

17 THE WITNESS: I mean, you're asking me to  
18 assume something, and --

19 BY MS. STEINMAN:

20 Q. I am. I am asking you to assume  
21 something.

22 A. Right. It is certainly true that there

1     could be changing conditions, changing conditions  
2     that may be more important for certain titles than  
3     others. And but again, the empirical analysis I  
4     spent in my reports -- I mean, they also have one  
5     thing in common, and that is they were all offered  
6     on Internet Archive's -- through Internet  
7     Archive's digital lending library in Q2; there was  
8     instant access; there were no technical controls  
9     in place limiting circulation of those titles.  
10    That option was no longer available to consumers  
11    in Q3. And that's the common factor that all  
12    these 127 titles have in common.

13           Q. Are you aware that it is also the case  
14    that rainfall levels fall in Q3 every year, and  
15    yet that's not the cause of the decline in these  
16    OverDrive checkouts or Hachette sales either,  
17    right?

18           MR. GRATZ: Lacks foundation. Calls for  
19    speculation. Vague.

20           THE WITNESS: I have not considered  
21    information on rainfall.  
22

1 BY MS. STEINMAN:

2 Q. Did you control for pricing in your study  
3 of the OverDrive checkouts or the Hachette e-book  
4 and paperback sales between Q2 and Q3 2020?

5 A. To the extent that those prices do not  
6 change, I've controlled for it.

7 Q. To the extent there were changes in the  
8 prices, did you control for it?

9 MR. GRATZ: Lacks foundation.

10 THE WITNESS: I have not controlled for  
11 that. And one reason is, economists are generally  
12 very careful with modeling sales as a function of  
13 crisis. That leads to a classic and fundamental  
14 econometric issue called simultaneity. It comes  
15 down to basic economics that quantity and prices  
16 are determined through the forces of supply and  
17 demand. And that basic economic relationship  
18 means, from an empirical point of view, one has to  
19 be very careful when you model sales as function  
20 of price.

21 BY MS. STEINMAN:

22 Q. Is it -- do you deny, Dr. Jørgensen, that

1     when book publishers discount books, that that  
2     leads to -- often leads to changes in both revenue  
3     and units sold?

4           A.   I mean, that's certainly possible.  You  
5     asked a very broad question.  I don't have the  
6     data or the evidence to tell you if discounts are  
7     effective or not.

8           Q.   And my question to you is, when you did  
9     your report, did you look to see whether any  
10    changes in prices were a plausible factor for the  
11    changes in Q2 and Q3 2020 figures for either the  
12    OverDrive checkouts or the print and e-book sales?

13          A.   So for OverDrive, we know that libraries  
14    have access to e-books through OverDrive under a  
15    number of different licensing agreements, and some  
16    of those are preset in time.  And the revenue  
17    data, as we talked about earlier, it has a  
18    complicated relationship to the underlying  
19    checkouts.

20               And similarly, discounts, I'm not sure  
21    how one would think about discounts in the context  
22    of the OverDrive data.

1 Q. Let's focus for a second on the Hachette  
2 data. My question is a very simple one.

3 Did you look to determine whether the  
4 changes in Q2 and Q3 e-book and paperback sales  
5 could have been impacted by changes in prices?  
6 Did you look at that? Not -- I'm not asking you  
7 whether you had the data, I'm simply asking you,  
8 did you look at that in your analysis in your  
9 expert reports?

10 MR. GRATZ: Vague.

11 THE WITNESS: I looked at paperback sales  
12 to Amazon and Barnes & Noble, for instance. And  
13 yes, I don't have any information about what those  
14 books were sold for or what price through those  
15 channels. Like, the final consumer price.

16 BY MS. STEINMAN:

17 Q. And do you have any -- as you sit here  
18 today, do you have any basis to contest the notion  
19 that sales of books can be impacted by changes in  
20 prices?

21 A. That's certainly a possibility.

22 Q. When you wrote your report and you

1 compared both the OverDrive checkouts and the  
2 Hachette e-book and paperback sales between Q2 and  
3 Q3 2020, did you control for broader sales  
4 trajectories for the individual works-in-suit; in  
5 other words, whether a book had long had declining  
6 sales quarter by quarter?

7 A. I mean, by construction, the empirical  
8 analysis set up in a way that it compares two  
9 periods in time that are close to each other. And  
10 the intention of that design is exactly to sort of  
11 zoom in on sort of a short trend or a sales trend  
12 in a short period of time for the very reason that  
13 it allows a simple comparison without necessarily  
14 having to consider the full sales trajectory of a  
15 title. That is, in some sense, by design.

16 Q. So in other words, if a book had come out  
17 in 2019 and it had steadily declining sales  
18 quarter by quarter, that could well have been the  
19 impact -- that could well have been the reason for  
20 the decline in sales between Q2 and Q3 2020 and  
21 not the Internet Archive, correct?

22 A. I think it's fair to say that any given

1 title may become less popular over time, and  
2 therefore, you could expect sales to go down from  
3 Q2 to Q3.

4 But the important part of my empirical  
5 analysis is the works-in-suit, they have one  
6 common factor, and that is consumers had the  
7 option of taking out a digitized book loan during  
8 National Emergency Library period, which mostly  
9 correspond to Q2, and that option was no longer  
10 available to them.

11 So the empirical analysis looks at, well,  
12 did you see a systematic increase in the  
13 works-in-suit over that period when consumers no  
14 longer had that option?

15 So yes, it may be that any individual  
16 title may be on a downward trajectory, but in this  
17 example, the question is, did consumers go from  
18 Internet Archive and over to, for instance, e-book  
19 lending options available through OverDrive?

20 Q. Dr. Jørgensen, you had testified earlier  
21 that some of these books went up in OverDrive  
22 loans and some went down; likewise, with Hachette,

1 some sales went up and some sales went down.

2 What basis do you have, as you sit here  
3 today, to assert that the one common factor that  
4 the books had was that they were offered on the  
5 Internet Archive? What basis do you have to say  
6 there weren't other common factors for the books  
7 that either, say, went up or went down?

8 MR. GRATZ: Lacks foundation.

9 THE WITNESS: I can say with certainty  
10 that the one thing they -- that one thing they  
11 have in common is that they were available through  
12 Internet Archive's digital lending library, and  
13 that was effectively taken down in Q3. And I  
14 don't have evidence or data that allows me to  
15 confirm or necessarily refute that there would be  
16 other common factors.

17 BY MS. STEINMAN:

18 Q. In your study, did you control for the  
19 topics of the works-in-suit and how topics -- some  
20 topics were performing in some fashion in Q2 and  
21 Q3 2020 and some topics were performing in a  
22 different fashion? Did you control for that?

1           A. As I stated before, I mean, to the extent  
2 that those topics or the interest in certain  
3 topics are constant from Q2 to Q3, I've controlled  
4 for that. And if there were changing conditions,  
5 I have not.

6           I believe the works-in-suit include many  
7 different titles from different genres. It also  
8 includes classics, which may have a more steady  
9 demand.

10          Q. Did you control for genre of the  
11 works-in-suit, whether there were any changes in  
12 popularities of genres that were a potential cause  
13 for the particular performances of the  
14 works-in-suit between Q2 and Q3 2020?

15          A. To the extent that genres and their  
16 popularity did not change between Q2 and Q3, I did  
17 control for it. To the extent that there are  
18 changes that affect individual titles, I did not.

19          Q. Did you control for any publisher or  
20 author marketing efforts in 2020 for the  
21 works-in-suit?

22          A. To the extent those marketing efforts are

1 constant across Q2 and Q3, I controlled for them.  
2 If they changed, I did not.

3 Q. To the extent they changed, did you look  
4 at the impact of author appearances when you  
5 compared the data in Q2 and Q3 2020?

6 A. And by author appearances, you are  
7 thinking of --

8 Q. Authors --

9 A. -- public speaking?

10 Q. Yes. Authors frequently give talks in  
11 bookstores, they frequently appear on radio shows,  
12 they frequently appear on television shows. Those  
13 are all author appearances.

14 A. I have not seen any data on that.

15 Q. So you did not control for any  
16 differences in author appearances between Q2 and  
17 Q3 2020?

18 A. I mean, to the extent they are not  
19 changing from Q2 to Q3, I controlled for it. But  
20 without data, any changes in that I would not be  
21 able to control.

22 Q. Did you look at any changes in public

1 mentions, including press, regarding the  
2 works-in-suit between -- you know, in any period  
3 of 2019 or 2020?

4 A. Again, can you define what you mean by  
5 public mentions?

6 Q. Sure. So did you look at whether any of  
7 the works-in-suit had been discussed in the press,  
8 whether the traditional press or in social media,  
9 and whether those, you know, variations in those  
10 press mentions had any impact on the differences  
11 between Q2 and Q3 checkouts and sales for the  
12 works-in-suit?

13 A. To the extent that plaintiffs are  
14 tracking that information and -- and using that to  
15 inform their thinking about sales, I have not seen  
16 that data and, therefore, I've not controlled for  
17 it beyond the fact that I'm looking at changes  
18 between Q2 and Q3. And if those factors are  
19 constant, I've effectively controlled for it by  
20 looking at changes.

21 Q. But to the extent those have changed, you  
22 haven't looked at that?

1           A. I have not seen --

2           Q. Or to the extent those changed between  
3 one part of 2020 and a different part of 2020, you  
4 have not controlled for that in your report.

5           A. I have not seen any evidence suggesting  
6 that that's -- that that's a factor, and therefore  
7 I have not controlled for it.

8           Q. Did you look?

9           A. If I've collected data from social media  
10 and newspaper mentions of the works-in-suit? I  
11 have not collected that data.

12          Q. Did you look at Google Trends to  
13 determine whether there was change in the volume  
14 of search regarding the works-in-suit during the  
15 relevant time periods?

16          A. My understanding is that Google Trends  
17 don't say anything about volume. They say  
18 something about trends. And the scale of that  
19 metric -- as I sit here today, it's been a while  
20 since I looked at that kind of data. I'm not sure  
21 what inferences you necessarily can draw from that  
22 for the volume of books -- of book demand.

1           Q. Putting aside the strengths or weaknesses  
2 Google Trends, did you look at it for the  
3 works-in-suit during the 2020 --

4           A. I have not. I have not considered Google  
5 Trends data.

6           Q. Did you control for any retailer  
7 marketing or placement changes for the  
8 works-in-suit for any period in 2019 or '20?

9           A. To the extent that they are unchanged  
10 from Q2 to Q3, I have controlled for that. To the  
11 extent that they are changing, I have not. I have  
12 not seen any data or any evidence on that subject.

13          Q. And did you investigate whether retailers  
14 had made any marketing or placement changes for  
15 the works-in-suit between -- during any of the  
16 relevant time periods in 2019 or '20?

17          A. I have not researched that question for  
18 the very reason that I can't think of a reliable  
19 data source where you would be able to collect  
20 that information for the works-in-suit.

21          Q. Did you conduct any interviews to  
22 determine any information about retailing --

1 retailer marketing or placement changes?

2 A. I have not conducted any interviews.

3 Q. And would you agree with me that if, in  
4 fact, a retailer, for example, put one of these  
5 titles in the front of the store near the checkout  
6 counter in Q2 2020 and removed it in Q3 2020, that  
7 that could lead to a decline in sales?

8 A. It's possible. I think you're posing a  
9 hypothetical, and I don't know if we're thinking  
10 of one store or stores across the U.S., so I'm --  
11 I would need more information to -- to think about  
12 that question.

13 Q. Are you aware that publishers often enter  
14 into agreements with large book retailers  
15 regarding book placement?

16 A. I'm not aware of the specifics of those  
17 arrangements, but I wouldn't be surprised if  
18 that's the case.

19 Q. Well, let's assume, hypothetically, that  
20 Barnes & Noble agreed that, across 30 stores, it  
21 would put a particular title near the checkout  
22 counter or it would put it face forward on its

1 shelves.

2 Do you think it's a fair assumption that  
3 that would impact sales?

4 MR. GRATZ: Lacks foundation.

5 THE WITNESS: Whether it's a fair  
6 assumption, I think as a fundamental economic  
7 matter, if -- I think product placement may have  
8 an effect on, you know, what books consumers pick  
9 up as they walk through a store. That seems like  
10 a plausible relationship. But again, you may  
11 imagine consumers going into a store with a  
12 specific purchase in mind.

13 So maybe in this hypothetical. I don't  
14 know.

15 BY MS. STEINMAN:

16 Q. Did you control in your study for whether  
17 either the author or the title had received any  
18 awards during an earlier period of time and  
19 whether there was a decline in -- a decline in  
20 Q3 2020 as a result of sort of diminishing impact  
21 of those author awards?

22 A. So to the extent that a title has

1 received critical acclaim in the past and that  
2 effect has not changed, I've controlled for that.  
3 So the fact that William Golding won the Nobel  
4 Prize in literature for his works, including Lords  
5 of the Fly [sic], which is one of the titles at  
6 issue in this case -- I believe he won that Nobel  
7 Prize in -- at some point in the '80s, so the  
8 effect of winning a Nobel Prize on book sales of  
9 that author's works, to the extent that that  
10 recognition is steady, I've accounted for that by  
11 looking at changes.

12 And if you are asking me if the critical  
13 acclaim of a Nobel Prize or other awards diminish  
14 over time, that could be a changing market  
15 condition. Whether that changed sharply between  
16 Q2 and Q3, I have not -- I have no data, no  
17 evidence, to support that or confirm it or deny  
18 it.

19 Q. Did you look at the social media  
20 surrounding the works-in-suit in 2020?

21 A. I have not looked at that.

22 Q. So you haven't controlled for that in

1 your report to the extent that there were changes?

2 A. I think that's a fair characterization.

3 Q. Did you look at the level of library  
4 lending of print books of the works-in-suit  
5 between Q2 and Q3 2020?

6 A. I have not seen that data. I don't know  
7 if it's available. I don't know if it's even  
8 collected, and for that reason I have not. I've  
9 not been able to consider it.

10 Q. So whatever your reasons were, you did  
11 not control for the level of library lending of  
12 print books for the works-in-suit between Q2 and  
13 Q3 2020, correct?

14 A. I mean, to the extent that that is not  
15 changing between Q2 and Q3, I am controlling for  
16 it. But no, I don't have the data to control for  
17 it if it is, indeed, changing.

18 Q. Did you control for time lapses from the  
19 release of television shows or film adaptations  
20 for any of the works-in-suit when you looked at Q2  
21 and Q3 2020?

22 A. I'm not sure what you mean by time

1       lapses.   Maybe you can...

2               Q.   Let's say, for example, there was a --  
3       you know a -- a program, a film, made out of a  
4       work a few years earlier which led to a huge  
5       increase in sales, and then, over time, a sort of  
6       steady decline as a result of that movie or  
7       television adaptation.

8               Did you look at that when you were  
9       comparing the titles?

10              A.   I mean, to the extent that those factors  
11       impact the outcomes of interest to my empirical  
12       analysis, given -- if they don't change from Q2 to  
13       Q3, I have controlled for that.   I have not seen  
14       any evidence or suggestion that there are  
15       important events for the works-in-suit in Q2 and  
16       Q3 in terms of those factors.

17              Q.   Did you look at for all of the  
18       works-in-suit the timing of movie and television  
19       adaptations of these works?

20              A.   I believe I've Googled a couple of them,  
21       and that preliminary analysis didn't really come  
22       up with any data.   And -- but I have not

1 systematically collected data on those factors  
2 that would -- would allow me to confirm or deny  
3 whether those factors were, indeed, changing from  
4 Q2 to Q3.

5 Q. Did you control for whether there had  
6 been an earlier spike in a book title in Q2 2020  
7 because of a new edition or a new book cover, and  
8 the sort of natural decline after that first burst  
9 onto the market?

10 A. I have not considered if new book covers  
11 are an important driver of demand. And to extent  
12 that new book covers explicitly being introduced  
13 either in Q2 or Q3 being an important determinant  
14 of, for instance, OverDrive e-book lending, I  
15 have -- I haven't seen data on that. I have not  
16 seen -- I have no evidence to confirm or deny  
17 whether that is a factor that's important.

18 I would assume that most -- I would  
19 assume that most book title -- most of the  
20 works-in-suit have book covers that -- that -- so  
21 I'll -- I would put it this way: I have no  
22 statistics on how often books in general or the

1 works-in-suit in particular changed their book  
2 cover.

3 Q. And I assume you also did not look into  
4 title-related fluctuations in demand for the  
5 works-in-suit for any other reasons than the ones  
6 we've just reviewed.

7 A. I mean, to the extent that those other  
8 conditions stay the same between Q2 and Q3, I have  
9 accounted for them by looking at changes.

10 Q. But to the extent there were  
11 title-related fluctuations in demand for other  
12 reasons, you haven't investigated those other  
13 reasons, correct?

14 A. I think it's fair to say that other  
15 reasons not spelled out I have not considered.  
16 Yes.

17 Q. And did you focus on age-related  
18 fluctuations in demand, whether books --  
19 completely unrelated to the impact of the Internet  
20 Archive, whether the books-in-suit had age-related  
21 fluctuations between Q3 -- between Q2 and Q3 2020  
22 that would have an impact on understanding what

1 happened during that time period?

2 A. Again, that's -- that factor is, almost  
3 by design, accounted for. So the fact that I'm  
4 comparing changes across quarters, I would think  
5 that -- or my assumption is that any age-related  
6 factors would stay roughly the same across those  
7 two quarters and, therefore, I would account for  
8 that when I compute changes.

9 It's true that when -- if you were to  
10 look at data over a longer period where the age of  
11 the work does change, that that could be a  
12 consideration for that.

13 Q. Are you aware, for example, that some of  
14 the Hachette titles were relatively recently  
15 published titles that could well have age-related  
16 fluctuations between two quarters?

17 A. I understand that there are some titles  
18 among the works-in-suit that are more recently  
19 published. And -- and, yes, there may be changes  
20 from quarter to quarter. Whether that's driven by  
21 age, I have no -- and when I say driven by age, I  
22 mean age and age alone -- and other things, I have

1 not seen evidence of.

2 Q. Did you not only omit controls for  
3 multiple factors individually, but also  
4 collectively, jointly?

5 MR. GRATZ: Objection. Vague.

6 THE WITNESS: I'm not sure I understand  
7 your question. Maybe you can -- maybe repeat it  
8 at least.

9 BY MS. STEINMAN:

10 Q. Of course.

11 If there were many factors impacting the  
12 OverDrive checkouts and Hachette e-book and  
13 paperback sales of the approximately 25 works that  
14 you looked at, those would be additive. They  
15 would each have some impact on the Internet  
16 Archive; is that correct?

17 A. I think it's -- it's fair to assume that  
18 demand for books and, in particular, the 25  
19 Hachette titles, are impacted by a multitude of  
20 factors. Yes.

21 Q. Let's return to the subject of  
22 seasonality.

1                   Summertime is very different than spring,  
2           is it not, Dr. Jørgensen --

3                   MR. GRATZ:   Objection.

4           BY MS. STEINMAN:

5                   Q.   -- for --

6                   MR. GRATZ:   Lacks foundation.

7           BY MS. STEINMAN:

8                   Q.   -- a wide variety --

9                   MR. GRATZ:   Sorry, maybe the question  
10          wasn't finished.

11                   MS. STEINMAN:   Okay.   Let me rephrase.

12          BY MS. STEINMAN:

13                   Q.   Would you agree with me that, for a wide  
14          variety of reasons, summertime is quite different  
15          than spring in the book publishing arena?

16                   MR. GRATZ:   Lacks foundation.

17                   THE WITNESS:   Are you thinking of a  
18          specific year, or is this --

19          BY MS. STEINMAN:

20                   Q.   In all years.

21                   A.   All years?

22                   Q.   Yes.   In all years.

1           A. It's a very broad question, and as such,  
2     it's a little unclear to me exactly based on what  
3     metric that you would conclude that there are  
4     differences. But broadly speaking, yes, I agree  
5     that there are differences between springtime and  
6     summertime.

7           And I would say for 2020, the year that I  
8     analyzed for the purposes of testing for potential  
9     substitution effects, I -- I would -- it's my  
10    opinion that 2020 was unique in that regard. And  
11    it's a little unclear if the usual seasonal  
12    patterns would apply to 2020.

13          Q. So kids, by and large, are not in school  
14    in the summertime, true?

15          A. I believe that's true, but kids may also  
16    attend, you know, out-of-school activities, like  
17    tutoring activities which can take place during  
18    the summer.

19          Q. And people spend more time outside in the  
20    summer, do they not?

21               MR. GRATZ: Lacks foundation.

22               THE WITNESS: It depends on where you

1 live. I believe -- I wouldn't be surprised if  
2 people in -- in the south spend more time indoors  
3 in the summer than outside.

4 BY MS. STEINMAN:

5 Q. Fair enough.

6 In the Northeast, people spend more time  
7 outside in the summertime, do they not?

8 A. I think that's a fair assumption to make.  
9 I don't have the data or the evidence to confirm  
10 or deny.

11 Q. And do you think it's fair to say that  
12 people do different types of activity in the  
13 summertime.

14 A. What do you mean by activities?

15 Q. They play more baseball. They go  
16 swimming.

17 A. That's likely true.

18 Q. Are you aware that Dr. Reimers controlled  
19 for seasonality for the works-in-suit in one of  
20 her models and that, as a result, she decided that  
21 one of her initial results was not reliable?

22 MR. GRATZ: Lacks foundation.

1           THE WITNESS: I've reviewed Dr. Reimers'  
2     report. I don't think she concluded that one of  
3     her results was unreliable, but my recollection is  
4     a little fuzzy. I haven't reviewed it in great  
5     detail.

6           And I would -- maybe we can take a look  
7     at her report. I would be --

8     BY MS. STEINMAN:

9           Q. Let's --

10          A. -- interested --

11          Q. Yes. Let's do that. Dr. Reimers' report  
12     is Exhibit 8.

13          A. One moment.

14          Q. And I would direct your attention to  
15     paragraph 53.

16          A. 53? I'm there. Should I review it?

17          Q. Yes, please.

18          A. One moment. And it was 53, correct?

19          Q. Yes.

20          A. Yes. I've read it.

21          Q. So initially Dr. Reimers concluded that  
22     the Amazon sales rankings for the print versions

1           Q. When you looked at the OverDrive data for  
2   2020 for all titles and determined that the total  
3   number of e-book loans decreased by  
4   about [REDACTED] between Q2 and Q3, did you look  
5   further at whether different types of books had  
6   had different rates of decline, whether new books  
7   or old books or by genre or by subject matter or  
8   any other breakdown?

9           MR. GRATZ: Vague.

10          THE WITNESS: The breakdowns I  
11   considered, you know, using the data from the AAP  
12   StatShot. They were by format. And as I sit  
13   here, I don't recall if there was a breakdown by  
14   genre. I don't recall explicitly analyzing that  
15   data, if it's there.

16          BY MS. STEINMAN:

17          Q. Sitting here today, do you believe that  
18   the fact that libraries and bookstores -- let me  
19   rephrase.

20                 I will represent to you that in Q3 2020  
21   libraries and bookstores began opening or at least  
22   engaging in check- -- you know, curbside checkout.

1           If that is the case, do you believe that  
2           that could be a potential plausible contributing  
3           factor why the OverDrive checkouts for some of the  
4           works-in-suit went down between the second and  
5           third quarter of 2020?

6           MR. GRATZ: Lacks foundation. Incomplete  
7           hypothetical.

8           THE WITNESS: I guess it's certainly a  
9           possibility, but I don't have the data on library  
10          lending of physical books of the works-in-suit,  
11          whether that changed from Q2 to Q3. I don't have  
12          that information so I can't confirm or -- or deny  
13          that possibility.

14          MS. STEINMAN: Okay. Jesse, let's look  
15          at -- let's introduce Exhibit 11, which is  
16          Internet Archive 140648.

17                 (Jørgensen Deposition Exhibit 11 marked  
18                 for identification and attached to the  
19                 transcript.)

20          THE WITNESS: And after this exhibit,  
21          would it be possible to do a quick break?

22          MS. STEINMAN: Yes.

## C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



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